Supreme Court, U.S.
FILED
JUN 23 1994
OFFICE OF THE CLERK

(3)

No. 93-1869

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JENNINGS WATER, INC.,

Petitioner,

v.

CSL UTILITIES, INC. and
CSL COMMUNITY ASSOCIATION, INC.,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JAMES R. FISHER
(Counsel of Record)
DONALD M. SNEMIS
ICE MILLER DONADIO & RYAN
One American Square
Box 82001
Indianapolis, Indiana 46282-0002
(317) 236-2100

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. 1-800-347-8208

22 pp

QUESTIONS PRESENTED

I. DOES THE DEVELOPMENT OF WATER RESOURCES BY A UTILITY CONSTITUTE SERVICE SIMILAR TO THE SERVICE PROVIDED BY A WATER ASSOCIATION WHICH SELLS WATER WHOLESALE TO THAT UTILITY?

II. DOES THE GRANT OF PERMITS TO CONSTRUCT A WATER PRODUCTION AND TREATMENT FACILITY BY A STATE CONSTITUTE THE GRANT OF A PRIVATE FRANCHISE TO PROVIDE WATER SERVICES?

III. DOES 7 U.S.C. §1926(b) PROHIBIT A COMMUNITY FROM DEVELOPING ITS OWN WATER RESOURCES IN LIEU OF PURCHASING WATER WHOLESALE FROM A WATER ASSOCIATION?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES iv

STATEMENT 1

REASONS FOR DENYING THE PETITION 4

I. THE DEVELOPMENT OF WATER RESOURCES BY THE WHOLESALE WATER CUSTOMER OF A WATER ASSOCIATION HOLDING AN FmHA LOAN DOES NOT VIOLATE THE PROHIBITIONS OF 7 U.S.C.§1926(b) 4

A. A Community's Development of Its Own Water Resources Is Not Service Similar to the Wholesale Supply of Water to a Retail Water Supplier. 5

B. The Issuance of Permits to Build a Water Production and Treatment Facility Does Not Constitute The Granting of A Private Franchise. 9

C. 7 U.S.C. §1926(b) Does Not Prohibit Communities From Developing Their Own Water Systems 11

II. THE CASE LAW CITED BY THE PETITIONER IS DISTINGUISHABLE FROM THE CASE AT BAR 12

CONCLUSION 16

TABLE OF AUTHORITIES

Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) 10

City of Madison, Mississippi v. Bear Creek Water Ass'n Inc., 816 F.2d 1057 (5th Cir. 1987) 13

Estate of Cowart v. Nicklos Drilling Company, 112 S. Ct. 2589 (1992) 10

Glenpool Utility Services v. Creek County Rural Water District, 861 F.2d 1211 (10th Cir. 1988), cert. denied, 490 U.S. 1067 (1989) 14

Jennings Water, Inc. v. City of North Vernon, Inc., 895 F.2d 311 (7th Cir. 1989) 3, 6

Jennings Water, Inc. v. CSL Utilities, Inc. and CSL Community Association, Inc., 16 F.3d. 130 (7th Cir. 1993) 5, 9

Moore Bayou Water Association v. Town of Jonestown, 628 F. Supp. 1367 (N.D. Miss. 1986) . . 13

Negonsott v. Samuels, 113 S.Ct. 1119 (1993) 10

Norfolk and Western Railway Co. v. American Train Dispatchers Ass'n, 111 S. Ct. 1156 (1991) 10

Rural Water District #3 v. Owasso Utilities Authority, 530 F. Supp. 818, (N.D. Okl. 1979) 14

Watson Rural Water Company, Inc. v. Indiana Cities Water Corp., 540 N.E.2d 131 (Ind. App. 1989) 7

Statutes:

7 U.S.C. §1926(b) . . . . . passim

Other Authority:

S. Rep. No. 566, 87th Cong., 1st Sess., *reprinted in* 1961 U. S. Code Cong. & Admin. News 2243 . . 11

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Respondents, CSL Utilities, Inc. and CSL Community Association, Inc.,[1] respectfully pray that the Petition For Writ Of Certiorari filed by Jennings Water, Inc. to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit in this case be denied. A copy of the opinion of the Court of Appeals, as well as the opinion of the District Court for the Southern District of Indiana regarding this matter, were submitted by the Petitioner. The Respondents agree with the statement of jurisdiction made by the Petitioner in its Petition.

STATEMENT

Most of the facts relevant to the Petition are set forth in the Petition and in the opinions of the lower courts. In the interests of brevity, all of the pertinent facts will not be restated here. However, some supplementation is necessary.

CSL Utilities, Inc. ("CSL") is a privately owned utility incorporated on December 17, 1974. CSL Community Association, Inc. ("Community Association") is a not-for-profit association made up of homeowners in the residential neighborhood known as Country Squire Lakes, which is located in Jennings County, Indiana. CSL was formed to provide water to Country Squire Lakes, which it has been doing since the subdivision was developed in 1975.

---

[1]CSL Utilities, Inc. is a wholly-owned subsidiary of Hidden Valley Lake, Inc. CSL Utilities, Inc. has no subsidiaries. CSL Community Association, Inc. has no parent or subsidiary corporations.

Prior to that time, there were no water customers in that area. To the extent CSL was granted a private franchise to provide water services, that grant occurred in 1974 when CSL was formed.

CSL built the water delivery system necessary to serve its customers in Country Squire Lakes with the intent that CSL would build its own water purification and delivery system in the future. However, Country Squire Lakes was not settled overnight. Because of the sparse population of the subdivision in its early stages, an entirely new water facility was impractical and unjustified. Therefore, CSL decided to purchase the water needed by Country Squire Lakes from Geneva Township Water Corporation wholesale, which, in turn, purchased water from the City of North Vernon, Indiana. When Jennings Water, Inc. ("Jennings") was formed in 1977, it assumed Geneva's agreement to sell water wholesale to CSL.

In the process of its formation, Jennings applied for, and received, an $898,000 loan from the Farmer's Home Administration (FmHA). In order to support its application, Jennings invited CSL to participate in the construction of its new water facility. However, CSL declined to sign a long-term water supply contract with Jennings. CSL still wanted to build its own water facility, and wanted the flexibility to remain a temporary wholesale purchaser until it could justify building its own facility. CSL made Jennings aware of its intentions. CSL also informed the FmHA of its decision not to participate in the Jennings project before the loan was granted, and Jennings modified its loan applications and engineering reports in order to acknowledge that CSL may not be a Jennings wholesale customer in the future. With this information in hand, the FmHA issued its loan to Jennings.

The residents of Country Squire Lakes are the water customers of CSL, not Jennings. Jennings has no direct contact with Country Squire Lakes residents. CSL built, maintains, and repairs the water delivery system which services the neighborhood. CSL handles all billings and collections for the water services they provide. CSL sets its own rates, which are then approved by the Indiana Utility Regulatory Commission ("IURC"). Jennings' service area map does not include Country Squire Lakes, nor does Jennings' annual report include the Country Squire Lakes residents within its reported customer base.

Jennings' water supply charges are based upon its costs to provide water service plus a reasonable profit. With regard to customers other than Country Squire Lakes residents, Jennings provides the services discussed above themselves. However, with regard to Country Squire Lakes, those services are provided by CSL, as noted. Thus, Country Squire Lakes residents are essentially charged twice for those services, subsidizing the other Jennings customers.

In March of 1987, the IURC granted Jennings permission to raise its rates for supplying water to Country Squire Lakes residents by approximately one hundred percent (100%). CSL had two alternatives to this drastic cost increase: select another wholesale provider or build the water facility it had always envisioned. CSL's attempts to negotiate directly with the City of North Vernon, Indiana for wholesale water was found to be in violation of 7 U.S.C. §1926(b) by the District Court for the Southern District of Indiana and the United States Court of Appeals for the Seventh Circuit. *Jennings Water, Inc. v. City of North Vernon, Inc., 895 F.2d 311 (7th Cir. 1989) ("Jennings I").* CSL instituted this lawsuit to establish that the construction of its own water facility would not violate the same statute. It is less expensive for CSL Utilities and its customers in

Country Squire Lakes to build a brand new system and amortize the costs over a ten year period than to pay the rates currently being charged by Jennings.

REASONS FOR DENYING THE PETITION

I. THE DEVELOPMENT OF WATER RESOURCES BY THE WHOLESALE WATER CUSTOMER OF A WATER ASSOCIATION HOLDING AN FmHA LOAN DOES NOT VIOLATE THE PROHIBITIONS OF 7 U.S.C.§1926(b).

7 U.S.C. §1926(b) does not flatly prohibit all competition with, or curtailment of, services provided by water associations holding FmHA loans. Had Congress desired to enact such a law, it would have been a simple thing to do, and the statute would have been far more brief. However, it is apparent from the language of the statute that Congress did not have that intent. Instead of selecting a flat prohibition of all competition, Congress chose to prohibit two specific types of competition. First, Congress prohibited the limitation or curtailment of water services provided by a water association holding an FmHA loan "by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body . . . ." 7 U.S.C. §1926(b). That portion of the statute is not at issue here, as it is undisputed that CSL is not a "municipal corporation or other public body."

Second, Congress prohibited the limitation or curtailment of water services provided by a water association holding an FmHA loan "by the granting of any private franchise for similar service within such area during the term of such loan . . . ." 7 U.S.C. §1926(b). The Seventh Circuit noted that the private franchise restriction within the statute contained three separate components: (1) the

curtailment of the association's service area (2) by a private franchise for similar service (3) that was granted during the term of the FmHA loan. *Jennings Water, Inc. v. CSL Utilities, Inc. and CSL Community Association, Inc.*, 16 F.3d. 130 (7th Cir. 1993) *("Jennings II")*. CSL and the Community Association contend that its proposed construction of a water facility, which would admittedly reduce its need for Jennings' wholesale water, would not satisfy any of these components. Although the Seventh Circuit found for the Respondents, it held that only one of the components of this prohibition was not satisfied. Specifically, the Court below held that the permission of the State of Indiana to build a water facility does not constitute the grant of a private franchise for similar service. *Id.*, at 137. However, CSL does not waive any of the arguments it made below. Jennings' Petition should be denied because *none* of the components of the private franchise restriction found in 7 U.S.C. §1926(b) have been met in this case.

A. A Community's Development of Its Own Water Resources Is Not Service Similar to the Wholesale Supply of Water to a Retail Water Supplier.

In *Jennings II*, the Seventh Circuit found that Country Squire Lakes is within Jennings' service area for purposes of the statute. CSL and Community Association believe that the Seventh Circuit's analysis of this component of the private franchise restriction was oversimplified, leading to an incorrect result.

Jennings provides one "service" -- it sells water wholesale to CSL. This simply involves hooking up one pipe to the CSL system, turning the valve on, and monitoring the water flow. CSL, not Jennings, built, repairs, and maintains the water delivery system. CSL, not

Jennings, handles all of the administrative duties such as billing and collection. CSL, not Jennings, proposes and obtains approval for the rates charged for water services provided to the residents of Country Squire Lakes. The Country Squire Lakes residents are, and always have been, customers of CSL, not Jennings. Jennings does not include Country Squire Lakes within its service area map, and Jennings does not include the residents of Country Squire Lakes in its annual report as part of its customer base.

Since Jennings does not provide any direct services to the residents of Country Squire Lakes, it is not possible that these are the functions which are allegedly being limited or encroached upon by CSL and the Community Association. The question then becomes: what *is* the service which Jennings claims is being curtailed? The only "service" which Jennings provides is wholesale water. The entity to which the water is provided is CSL, not the residents of Country Squire Lakes. Therefore, the only service allegedly being limited by the construction of a water utility is the service which Jennings provides CSL.

The District Court and Seventh Circuit found that CSL's attempt to purchase water from the City of North Vernon, Indiana would have been an encroachment on Jennings' service area by an entity providing a similar service. *Jennings I*, 895 F.2d at 311. That is not the case here. Jennings provides no services to the residents of Country Squire Lakes, and is not being supplanted by another third party wholesale water provider. Rather, through the development of its own resources, CSL will evolve from a wholesale water purchaser to a water producer. Jennings' "service area" is the wholesale provision of water to CSL. Jennings' service area is not being limited or curtailed by another entity providing similar service; the service is being made unnecessary because

Jennings' customer, CSL, will no longer require such a service. The statute protects Jennings against encroachment by third parties, it does not give Jennings the right to provide a service which is no longer needed.

Ironically, the only reported case which touches upon one of the issues raised in this case comes from the Indiana Court of Appeals. In *Watson Rural Water Company, Inc. v. Indiana Cities Water Corp.*, 540 N.E.2d 131 (Ind. App. 1989), Watson, like Jennings, attempted to carve out a new service area for itself by using 7 U.S.C. §1926(b). Watson was a not-for-profit Indiana corporation which engaged in water distribution in rural Clark County, Indiana. Watson, like Jennings, was started with funds from the FmHA. In 1974, Watson attempted to obtain a private franchise from the State of Indiana to provide water to a tract of land in Clark County. The attempt failed when the Indiana Utility Regulatory Commission (IURC) denied Watson's petition and granted the private franchise to Indiana Cities Water Corporation. Despite this fact, Watson began providing water service in 1985 to the Jeffersonville Hospital, which was under construction on the same piece of land. While providing this service, Watson again petitioned for a private franchise from the IURC to provide water service to this area. The IURC denied Watson's petition once again.

Indiana Cities filed a complaint seeking damages and a permanent injunction to enjoin Watson from providing water to the hospital. Watson, like Jennings, claimed that the hospital was now within its service area pursuant to 7 U.S.C. §1926(b), and that no third-party had the right to encroach upon that service area. The trial granted summary judgment to Indiana Cities. On appeal, the Indiana Court of Appeals held that Watson's claim of protection under 7 U.S.C. §1926(b) was barred by the doctrine of res judicata, as the IURC had already found that statute inapplicable. *Id.*,

at 138. Nevertheless, the Court went on to determine that the IURC made the correct decision.

The Indiana Court of Appeals held that the Jeffersonville Hospital was not within Watson's service area, despite the fact that Watson was currently serving the hospital:

> Watson's territory did not include the hospital and other disputed areas prior to the time Watson sought a certificate of public convenience and necessity. . . . It is our opinion that absent some prior territorial claim or proceeding, the mere existence of a transmission line will not cause all areas accessible from that line to be enveloped within the rural water utility's service area.

Id., at 138.

Jennings and Watson are in the same position. Watson attempted to carve itself out a new service area by supplying water to the Jeffersonville Hospital, and then hiding behind the protections of 7 U.S.C. §1926(b). However, the mere fact that Watson was serving the hospital did not mean that the hospital was within its service area. Rather, the right to serve the hospital, and all other water users on that particular tract of land, had been given to Indiana Cities earlier. The fact that Watson later provided the water did not change that fact. Here, CSL, not Jennings, holds the private franchise to serve the residents of Country Squire Lakes. The fact that Jennings later provided wholesale water to CSL for delivery to its customers does not change the fact that CSL holds the right to provide water service to those customers.

This decision by the Indiana Court of Appeals by no means bound the lower courts which decided this case, and it certainly does not bind this Court. However, the logic of the opinion is unflawed. CSL built the water delivery system for the Country Squire Lakes subdivision, and CSL operates that system. The only connection Jennings has with the residents of that subdivision is indirect at best. The evidence shows that Jennings itself does not even consider Country Squire Lakes as part of its service area. The courts below erred when they held that the residents of Country Squire Lakes were within the service area of Jennings rather than CSL.

B. The Issuance of Permits to Build a Water Production and Treatment Facility Does Not Constitute The Granting of A Private Franchise.

In *Jennings II,* the Seventh Circuit correctly held that the issuance of construction permits by subdivisions of the State of Indiana does not constitute the granting of a private franchise. Jennings fails to contest this finding in its Petition, choosing instead to focus upon the fact that some of the reported case law regarding 7 U.S.C. §1926(b) has indicated that it should be read broadly to protect water associations. CSL generally agrees with such a construction. However, Congress did not flatly prohibit all competition, encroachment, or curtailment of services provided by protected water associations.

Much of Jennings' Petition is nothing more than a plea for an absolute prohibition on all curtailments, limitations, or encroachments upon the service areas of protected water associations. Whether or not such a policy would be beneficial or not is irrelevant here. The simple fact is that when Congress drafted 7 U.S.C. §1926(b), they

drafted a generally protectionist statute which has its limits. Those limits must be respected.

The language of the statute must be honored. In a statutory construction case, the beginning point is the language of the statute. When a statute speaks with clarity to an issue, judicial inquiry is finished in all but the most extraordinary circumstances. *Estate of Cowart v. Nicklos Drilling Company*, 112 S. Ct. 2589, 2593 (1992). The Court is obligated to give effect to the unambiguously expressed will of Congress. *Negonsott v. Samuels*, 113 S.Ct. 1119, 1122-1123 (1993); *Norfolk and Western Railway Co. v. American Train Dispatchers Ass'n*, 111 S. Ct. 1156, 1162 (1991). Otherwise stated, if the language of a statute is unambiguous, the Court need look no further for an interpretation. *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); *Estate of Cowart*, 112 S.Ct. at 2593.

The portion of 7 U.S.C. §1926(b) applicable to this case is clear and unambiguous. With regard to this lawsuit, it prohibits a curtailment or limitation of the services provided by a protected water association through the grant of a private franchise. CSL was granted its franchise to supply water to Country Squire Lakes residents when that development was first created in 1974. The State's authority to approve construction plans for the water treatment facility proposed by CSL is limited to approval of the construction and environmental safety of the plans. It does not contemplate a State review or decision concerning the right of the utility to supply water to its customers, or the appropriateness of the decision to use its own water. The mere issuance of specialized building permits does not constitute the grant of a private franchise, as the Seventh Circuit Court of Appeals correctly held. Therefore, Jennings' Petition should be denied.

C. 7 U.S.C. §1926(b) Does Not Prohibit Communities From Developing Their Own Water Systems.

7 U.S.C. §1926(b) does not apply to situations where communities such as the Community Association wish to supplant wholesale water suppliers by developing their own water resources. The statute contemplates the intervention of an outside third-party as prohibited conduct. If this Court were to adopt the strained reading of the statute urged by Jennings, it would discourage the development of rural water resources and encourage high prices for water, thwarting the very purpose of the statute.

In enacting this statute, the intent of Congress was to promote the development of water resources and to reduce the cost of water to the users:

> This provision authorizes the very effective program of financing the installation and development of domestic water supplies and pipelines serving farmers and other in rural communities. By including service to other rural residents, *the cost per user is reduced* and the loans are more secure in addition to *the community benefits of a safe and adequate supply of running household water.*

S. Rep. No. 566, 87th Cong., 1st Sess., *reprinted in* 1961 U. S. Code Cong. & Admin. News 2243, 2309.

The facility proposed by CSL and the Community Association will reduce the cost of water to the residents of Country Squire Lakes by developing their own water source, thus expanding the water supply. Thus, both purposes of the statute, as expressed by Congress, will be furthered.

Adopting Jennings' position would create an absurd result. The residents of Country Squire Lakes would be prohibited from using their own water resources to supplement their service from Jennings. Taken to its logical extreme, no farmer who purchased water from a protected water association could irrigate his field with an irrigation pond or well. Under the construction urged by Jennings, such an act would constitute a limitation or curtailment of Jennings' service. Certainly, Congress did not intend the protectionist nature of the statute to extend so far that it denies landowners the right to use their own water resources.

The only reasonable interpretation of the statute is that it prohibits curtailment of service by outside third parties. To be precise, the statute prohibits curtailment by public bodies such as municipal corporations, as well as private franchises created by public bodies, which seek to prey upon established water service areas. A construction which prohibits water consumers from developing and using their own water resources would be contrary to the stated intent of Congress in enacting this legislation and would further contravene public policy.

II. THE CASE LAW CITED BY THE PETITIONER IS DISTINGUISHABLE FROM THE CASE AT BAR

Jennings cites several cases which it claims support its tortured construction of 7 U.S.C. §1926(b). However, a closer examination of these cases reveals that they are not on point. None of them deal with the private franchise portion of 7 U.S.C. §1926(b) which is at issue here. Rather, each of these cases concern the portions of the statute which restrict encroachment by municipalities and other public bodies. Therefore, these cases are inapplicable here.

For instance, Jennings cites *City of Madison, Mississippi v. Bear Creek Water Ass'n Inc.*, 816 F.2d 1057, 1060 (5th Cir. 1987) in support of its position. In *City of Madison*, the plaintiff, a city, brought eminent domain proceedings to condemn the facilities of the defendant, a water association that was indebted to the FmHA. At issue in this case was a portion of land which the indebted water association had previously and exclusively served, but which had since been enveloped by the nearby growing city of Madison. The city then instituted the eminent domain proceedings in an attempt to condemn the water association and acquire the right to provide water for the disputed area. The water association petitioned for summary judgment on the grounds that since they were indebted to FmHA, the application of 7 U.S.C. §1926(b) would bar the city's condemnation proceeding. *Id.* at 1058. The water association's plea for summary judgment was awarded and affirmed on appeal. *Id.* at 1061. When construing the language of 7 U.S.C. §1926(b), the court solely addressed the issues of municipal encroachment upon indebted water associations and did not discuss the private franchise clause which is the subject of the dispute currently at bar.

Jennings also cites *Moore Bayou Water Association v. Town of Jonestown*, 628 F. Supp. 1367 (N.D. Miss. 1986). In this case, a town threatened to institute eminent domain proceedings against an FmHA-indebted rural water district if they did not agree to sell their exclusive service rights and water facilities for a satisfactory price. At issue was an area of land which had been serviced by the water association and later annexed by the town. In response to the threats, the association brought suit against the town, seeking declaratory and injunctive relief. In granting the association's Motion for Summary Judgment, the district court held that the town's actions amounted to a curtailment or limitation of the service provided by the association, in

violation of that portion of 7 U.S.C. §1926(b) which prohibited encroachment by public bodies such as municipal corporations. *Id.* at 1370. The decision did not address a curtailment or limitation by the granting of a private franchise.

Jennings further cites *Glenpool Utility Services v. Creek County Rural Water District*, 861 F.2d 1211 (10th Cir. 1988), cert. denied, 490 U.S. 1067 (1989). In *Glenpool*, the plaintiff, a municipality, sought a declaratory judgment that it had the exclusive right to service the disputed area. The FmHA-indebted rural water district counterclaimed for a declaratory judgment that it had the exclusive right to service this area. While the district court held that neither party had the exclusive right to service the disputed area, the appellate court reversed and held that 7 U.S.C. §1926(b) barred the municipality from annexing the disputed area as a tool to provide water service to its residents. *Id.* at 1214. As in the other cases cited by Jennings, the *Glenpool* court addressed only the issue of municipal encroachment and never discussed the private franchise clause of 7 U.S.C. §1926(b).

Finally, Jennings cites *Rural Water District #3 v. Owasso Utilities Authority*, 530 F. Supp. 818, 823 (N.D. Okl. 1979). As in the other cases relied on by Jennings, *Rural Water* involved a suit brought by a rural water district against a city utility for infractions resulting from the city utility's encroachment into the area serviced by the FmHA-indebted, rural water district. The Court specifically declared that the private franchise restriction was not at issue. *Id.*, at 822. While declaring that the private franchise clause was not at issue in the *Rural Water* case, the court stated:

> The Court finds that the purpose of §1926(b), as reflected by the legislative history, is clear, i.e., 'protecting the territory served by such an association facility *against competitive facilities* which might otherwise be developed with the expansion of the boundaries of *municipal and other public bodies* into an area served by the rural system.'

Id. at 823 (emphasis supplied).

Unlike the plaintiffs in the cases cited by the Petitioner, CSL is not a municipal corporation. The issue in the above cases was the curtailment or limitation of a FmHA-indebted water association's services as a result of municipal annexation or inclusion. The prohibition of that type of encroachment can be found in the first portion of 7 U.S.C. §1926(b). The issue in the present case is the private franchise restriction of 7 U.S.C. §1926(b), which is a separate and distinct portion of the statute. For this reason, these cases are not pertinent here.

Of equal importance is the fact that each of the cited cases involved a newly created water utility attempting to move into a service area previously served by the indebted association, or a nearby existing utility expanding its service area into the indebted association. This case involves a utility (CSL) which has been in existence for twenty (20) years continuing to serve the same customers it has always served. The issue is the utilities' right to process its *own* water resources. 7 U.S.C. §1926(b) was never intended to allow a utility like Jennings to effectively annex an existing neighboring system, without compensation, by forbidding the residents served by that system from using their own water resources.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully Submitted,

James R. Fisher
Donald M. Snemis
ICE MILLER DONADIO & RYAN
One American Square
Box 82001
Indianapolis, Indiana 46282-0002
(317) 236-2100
Counsel for Respondents

June, 1994
ILL1FEFA.WP5